# DEPARTMENT OF REGULATORY AGENCIES DIVISION OF INSURANCE

## 3 CCR 702-2

## **CORPORATE ISSUES**

# **Amended Regulation 2-1-11**

## **VIATICAL SETTLEMENTS**

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## Section 1 Authority

This regulation is promulgated under the authority of §§ 10-1-109 and 10-7-615, C.R.S.

## Section 2 Scope and Purpose

The purpose of this regulation is to implement the Viatical Settlements Act, part 6, article 7, title 10, C.R.S. which governs viatical settlements and licensing requirements of viatical settlement providers and protects the rights of a life insurance policyowner seeking a viatical settlement.

## Section 3 Applicability

This regulation applies to all licensed viatical settlement providers, any person seeking a viatical settlement provider license, and life insurance producers negotiating a viatical settlement on behalf of a viator.

#### Section 4 Definitions

In addition to the definitions in §10-7-602, C.R.S., the following definitions apply to this regulation:

- A. "Insured" means the person covered under the policy being considered for viatication.
- B. "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

#### Section 5 License Requirements

- A. The initial application and any subsequent renewal application for a viatical settlement provider shall be accompanied by a fee as prescribed in §10-3-207(1.5), C.R.S. If a viatical settlement provider fails to pay the renewal fee within the time prescribed, or a viatical settlement provider fails to submit the reports required in this regulation, the nonpayment or failure to submit the required reports shall result in expiration of the license. If a viatical settlement provider has, at the time of renewal, viatical settlements where the insured has not died, it shall do one of the following:
  - 1. Renew or maintain its current license status until the earlier of the following events:
    - a. The date the viatical settlement provider properly assigns, sells or otherwise transfers the viatical settlements where the insured has not died; or
    - b. The date that the last insured covered by viatical settlement transaction has died.
  - 2. Appoint, in writing, either the viatical settlement provider that entered into the viatical settlement, the producer who received commissions from the viatical settlement, if applicable, or any other viatical settlement provider or producer licensed in this state to make all inquiries to the viator, or the viator's designee, regarding the health status of the insured or any other matters.
- B. A viatical settlement provider shall file with the commissioner, and thereafter for as long as the license remains in effect shall keep in force, evidence of financial responsibility in the sum of not less than \$100,000. This evidence shall be in the form of a surety bond issued by an insurer authorized in the State of Colorado. The bond shall not be terminated without thirty (30) days prior written notice to the licensee and the Commissioner.

## Section 6 Reporting Requirement

- A. On or before March 1 of each calendar year, the licensed viatical settlement provider shall submit an annual statement on a form prescribed by the commissioner along with the fees required in §10-3-207 (1.5), C.R.S.
- B. A life insurance producer shall file a notice of intent to transact viatical settlement business with the Division no later than thirty (30) days after the date the producer first negotiates a viatical settlement on behalf of a viator. The notice shall be filed regardless of whether the viatical settlement contract is consummated. The notice of intent shall be on a form prescribed by the Commissioner, and shall be accompanied by a fee of \$30.00. No additional notices of intent to transact viatical settlement business are required.

#### Section 7 General Rules

- A. With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a beneficiary, to the estate of the viator.
- B. Payment of the proceeds of a viatical settlement pursuant to § 10-7-609, C.R.S. shall be by means of wire transfer to an account designated by the viator or by certified check or cashier's check.
- C. Payment of the proceeds to the viator pursuant to a viatical settlement shall be made in a lump sum except where the viatical settlement provider has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank, or an affiliate of either. Retention of

- a portion of the proceeds not disclosed or described in the viatical settlement contract by the viatical settlement provider or escrow agent is not permissible without written consent of the viator.
- D. A viatical settlement provider or life insurance producers negotiating viatical settlements shall not discriminate in the making or soliciting of viatical settlements as provided by § 10-3-1104, C.R.S., or discriminate between the viators with dependents and without.
- E. A viatical settlement provider or life insurance producer negotiating viatical settlements shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator.
- F. A viatical settlement provider or life insurance producer negotiating viatical settlements shall not knowingly solicit purchasers who have treated or have been asked to treat the illness of the insured whose coverage would be the subject of the investment.
- G. If a viatical settlement provider enters into a viatical settlement that allows the viator to retain an interest in the policy, the viatical settlement contract shall contain the following provisions:
  - A provision that the viatical settlement provider will effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated. Benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary by the insurance company.
  - 2. A provision that the viatical settlement provider will, upon acknowledgement of the perfection of the transfer, either:
    - a. Advise the insured, in writing, that the insurance company has confirmed the viator's interest in the policy, or
    - b. Send a copy of the instrument sent from the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy, and
  - A provision that apportions the premiums to be paid by the viatical settlement provider and the viator, provided that the contract provides premium payment terms and nonforfeiture options no less favorable, on a proportional basis, than those included in the policy.
- H. In all cases where the insured is a minor child, disclosures to and permission of a parent or legal guardian satisfy the requirements of the Viatical Settlements Act and this regulation.
- I. If an insured is terminally or chronically ill, a viatical settlement provider shall pay an amount greater than the cash surrender value or accelerated death benefit then available.

#### Section 8 Prohibited Practices

A. A viatical settlement provider or life insurance producer negotiating viatical settlements shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a viatical settlement provider or life insurance producer negotiating viatical settlements is served with a subpoena and, therefore, compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at their last known addresses within five (5) business days after receiving notice of the subpoena.

- B. A viatical settlement provider shall not act also as a life insurance producer negotiating viatical settlements, whether entitled to collect a fee directly or indirectly, in the same viatical settlement.
- C. A life insurance producer negotiating viatical settlements shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

## Section 9 Insurance Company Practices

- A. Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a viatical settlement provider or a life insurance producer authorized to write viatical settlement contracts within thirty (30) calendar days of the date a request is received, subject to the following conditions:
  - 1. A current authorization consistent with applicable law, signed by the policy owner or certificate holder, accompanies the request;
  - 2. In the case of an individual policy or group insurance coverage where details with respect to the certificate holder's coverage are maintained by the insurer, submission of a form substantially similar to one prescribed by the commissioner, which has been completed by the viatical settlement provider or life insurance producer negotiating viatical settlement contracts in accordance with the instructions on the form.
- B. Nothing in this section shall prohibit a life insurance company and a viatical settlement provider or a life insurance producer negotiating viatical settlement contracts from using another verification of coverage form that has been mutually agreed upon in writing in advance of submission of the request.
- C. A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or life insurance producer negotiating viatical settlement contracts in compliance with this section in excess of any usual and customary charges to contract holders, certificate holders or insureds for similar services.
- D. The life insurance company may send an acknowledgment of receipt of the request for verification of coverage to the policy owner or certificate holder and, where the policy owner or certificate owner is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.
- E. A life insurance company shall not require the viator or insured to sign any request for change in a policy or a group certificate from a viatical settlement provider that is the owner or assignee of the insured's insurance coverage, unless the viator or insured has ownership, assignment or irrevocable beneficiary rights under the policy. In such a situation, the viatical settlement provider shall provide timely notice to the insured that a settlement transaction on the policy has occurred. Timely notice shall be provided within fifteen (15) calendar days of the change in a policy or group certificate.

## Section 10 Severability

If any provision of this regulation or the application of it to any person or circumstances is for any reason held to be invalid, the remainder of regulation shall not be affected.

#### Section 11 Enforcement

Non compliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance or other laws, which include the imposition of fines, issuance of cease and desist orders, and/or suspensions or revocation of license.

#### Section 12 Effective Date

This amended regulation shall become effective on September 1, 2012

## Section 13 History

Replaces Emergency Regulation 05-E-6 in its entirety New regulation effective March 1, 2006 Amended regulation effective September 1, 2012